

48A C.J.S. Judges § 91

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IV. Standards of Conduct; Restrictions and Prohibitions

B. Nature of Conduct Proscribed or Prohibited

1. In General

§ 91. Impropriety or appearance of impropriety

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  11(2), 21

It is a basic requirement, under general guidelines and canons of judicial conduct, that a judge's official conduct be free from impropriety or the appearance of impropriety.

It is a basic requirement, under general guidelines and canons of judicial conduct, that a judge's official conduct be free from impropriety or the appearance of impropriety.¹ Judicial fairness requires the appearance as well as the existence of impartiality.²

The duty of a judge to avoid creating an appearance of impropriety is one of taking reasonable precautions to avoid having a negative effect on the confidence of the thinking public in the administration of justice.³ While judges should avoid even the appearance of impropriety, a judge who feels able to preside fairly over the proceedings should not be required to step down upon

allegations of a party which themselves may be unfair or which simply indicate dissatisfaction with the possible outcome of the litigation.⁴

The test for the appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.⁵ When determining whether a judge's conduct violated the appearance of impropriety standard, the touchstone is the objectively reasonable belief, and an appearance of impropriety must be something more than a fanciful possibility and must have some reasonable basis.⁶

There is no blanket prohibition on a judge who is the subject of a judicial disciplinary proceeding contacting a potential witness to discuss charges against the judge, but to avoid any appearance of impropriety, a judge contacting a potential witness must proceed with considerable caution, particularly when contacting a subordinate employee.⁷

A judge's lack of courtesy to defendants creates the appearance of impropriety.⁸

CUMULATIVE SUPPLEMENT

Cases:

Judge's gratuitous remarks about counsel or her character undermine respect for the judiciary and the proceedings and leave an impression that the judge is not fair and impartial. [Edwards-Freeman v. State](#), 138 So. 3d 507 (Fla. 4th DCA 2014).

The appearance of impropriety inquiry is an objective one, asking whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. [MCR 2.003\(C\)\(1\)\(b\)](#); Code of Jud.Conduct, Canon 2. [Okrie v. State of Mich.](#), 306 Mich. App. 445, 857 N.W.2d 254 (2014).

In considering whether to revoke probation, judges must remain impartial by not prejudging and must maintain an open mind; judges should be sensitive to the appearance of impropriety and should take measures to assure that litigants have no cause to think their case is not being fairly judged. [State v. Finch](#), 2015 WL 4237954 (Minn. 2015).

Municipal court judge prejudiced the proper administration of justice, as ground for removal, by presiding over matters involving parties as to whom another judge expressed his preference to first

judge; litigants could have little confidence that a judge proceeding in such matters was rendering fair and impartial rulings, but rather they could reasonably have believed that such a judge was engaging in favoritism. [Pa. Const. art. 5, § 18\(d\)\(1\)](#). [In re Segal](#), 173 A.3d 603 (Pa. 2017).

A trial judge should, not only avoid impropriety, but must also avoid the appearance of impropriety. Const. Art. 5, § 10(a). [In re Bruno](#), 101 A.3d 635 (Pa. 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 Alaska—[In re Cummings](#), 211 P.3d 1136 (Alaska 2009).
Colo.—[People ex rel. A.G.](#), 262 P.3d 646 (Colo. 2011).
Conn.—[Francis v. Commissioner of Correction](#), 142 Conn. App. 530, 66 A.3d 501 (2013), certification denied, 310 Conn. 921, 77 A.3d 141 (2013).
Fla.—[In re Cohen](#), 99 So. 3d 926 (Fla. 2012).
Ga.—[Hubert v. State](#), 297 Ga. App. 71, 676 S.E.2d 436 (2009).
Ky.— [Alred v. Com.](#), [Judicial Conduct Com'n](#), 395 S.W.3d 417 (Ky. 2012), reh'g denied and opinion modified, (Oct. 25, 2012).
Nev.—[Ryan's Express v. Amador Stage Lines](#), 279 P.3d 166, 128 Nev. Adv. Op. No. 27 (Nev. 2012).
N.H.—[State v. Belyea](#), 160 N.H. 298, 999 A.2d 1080 (2010).
N.J.—[In re Boggia](#), 203 N.J. 1, 998 A.2d 949 (2010).
N.D.—[Woodward v. Woodward](#), 2010 ND 143, 785 N.W.2d 902 (N.D. 2010).
- 2 S.D.—[Marko v. Marko](#), 2012 SD 54, 816 N.W.2d 820 (S.D. 2012).
- 3 Iowa—[In re Gerard](#), 631 N.W.2d 271 (Iowa 2001).
- 4 Minn.—[In re Jacobs](#), 802 N.W.2d 748 (Minn. 2011).
- 5 Ga.—[Lacy v. Lacy](#), 320 Ga. App. 739, 740 S.E.2d 695 (2013).
Wis.—[In re Judicial Disciplinary Proceedings Against Crawford](#), 2001 WI 96, 245 Wis. 2d 373, 629 N.W.2d 1 (2001).
- 6 N.J.—[Kane Properties, LLC v. City of Hoboken](#), 214 N.J. 199, 68 A.3d 1274(2013).
- 7 Minn.—[In re Conduct of Galler](#), 805 N.W.2d 240 (Minn. 2011).

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Md.—[In re Lamdin](#), 404 Md. 631, 948 A.2d 54 (2008).

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